

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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GOVERNMENT EMPLOYEES INSURANCE CO.,  
GEICO INDEMNITY CO., GEICO GENERAL  
INSURANCE COMPANY and GEICO CASUALTY CO.,

Docket No.:  
1:18-CV-02852 (JBW)(PK)

Plaintiffs,

-against-

A.R.A MEDICAL CARE, P.C., et al.

Defendants.

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**DECLARATION OF PRISCILLA KAM**

Priscilla Kam, pursuant to 28 U.S.C. § 1746, hereby declares the truth of the following:

1. I am an associate with the law firm of Rivkin Radler LLP and am counsel for Plaintiffs Government Employees Insurance Company, GEICO Indemnity Company, GEICO General Insurance Company, and GEICO Casualty Company (collectively “Plaintiffs” or “GEICO”) in this action. I have personal knowledge of the facts set forth in this declaration, and would testify as to them in a court of law if required to do so.

2. I respectfully submit this declaration in support of GEICO’s motion for entry of a default judgment against Defendants Therapeutic Chiropractic Services, P.C. (“Therapeutic Chiro”) and David Hershkowitz, D.C. (“Hershkowitz”) (together, the “Defaulting Defendants”), pursuant to Rule 55(b)(2) of the Federal Rules of Civil Procedure, together with such other and further relief as the Court may deem just and proper. Specifically, GEICO seeks a default judgment:

(i) on its First Cause of Action against Therapeutic Chiro and Hershkowitz for a Declaratory Judgment;

- (ii) on its Thirty-Second Cause of Action against Hershkowitz for violations of the civil RICO statute, 18 U.S.C. § 1962(c);
- (iii) on its Thirty-Third Cause of Action against Hershkowitz for violations of the civil RICO statute, 18 U.S.C. § 1962(d);
- (iv) on its Thirty-Fourth Cause of Action against Therapeutic Chiro and Hershkowitz for common law fraud; and
- (v) on its Thirty-Fifth Cause of Action against Therapeutic Chiro and Hershkowitz for unjust enrichment.

## **I. Relevant Facts**

### **A. Procedural History**

3. GEICO commenced this action by filing of a Complaint on May 14, 2018. See Docket No. 1. GEICO subsequently resolved this action with all defendants, except for the Defaulting Defendants, who have failed to timely appear or answer, seek an extension, or take any other action in this case whatsoever.

4. True and correct copies of the Summons and Complaint were served on each of the Defaulting Defendants and proofs of service were subsequently filed with the Court via ECF. See Docket Nos. 15 and 22.

5. Both Defaulting Defendants failed to timely appear or answer, or to seek an extension of their initial time to do so, which expired on June 11, 2018. Id. Thereafter, Gabriel & Shapiro LLC filed notices of appearance on behalf of the Defaulting Defendants on June 19, 2018. See Docket No. 25. The Defaulting Defendants, however, failed to take any action whatsoever in this case beyond the filing of notices of appearance. Accordingly, and after nearly three months without any activity by the Defaulting Defendants, the Clerk of the Court, on GEICO's application, entered the Defaulting Defendants' defaults on September 17, 2018. See Docket Nos. 30 and 31.

6. Thereafter, by Order To Show Cause dated November 11, 2018, the Court directed GEICO to file a formal motion for default judgment in this action as to the Defaulting Defendants by December 13, 2018.

**B. An Overview of GEICO's Allegations Against the Defaulting Defendants**

7. The Complaint describes the Defaulting Defendants' fraudulent scheme in great detail. See Docket No. 1, *passim*. As set forth more fully in the Complaint, this action seeks to recover monies that the Defaulting Defendants have wrongfully stolen from GEICO by submitting, and causing to be submitted, thousands of fraudulent No-Fault insurance charges through Therapeutic Chiro seeking reimbursement for medically unnecessary and otherwise unreimbursable healthcare services, including illusory initial and follow-up examinations and chiropractic manipulative treatment (the "Fraudulent Services") that allegedly were provided to New York automobile accident victims ("Insureds"). See Docket No. 1, *passim*.

8. In particular, GEICO's Complaint alleges that:

- (i) Therapeutic Chiro is fraudulently incorporated and/or unlawfully owned, controlled, and operated by unlicensed laypersons;
- (ii) the Defaulting Defendants submitted claims for the Fraudulent Services which were not medically necessary and were provided – to the extent they were provided at all – pursuant to pre-determined fraudulent protocols designed solely to maximize the charges submitted to GEICO and to financially enrich the Defendants, rather than to treat or otherwise benefit the Insureds who purportedly were subjected to them;
- (iii) the current procedural terminology ("CPT") codes, or billing codes, used by the Defaulting Defendants in connection with the billing for the Fraudulent Services misrepresented and exaggerated the level of services that purportedly were rendered in order to inflate the charges submitted to GEICO;
- (iv) the Defaulting Defendants were ineligible to bill for or to collect No-Fault Benefits in connection with the Fraudulent Services because the Fraudulent Services were performed – to the extent that they were performed at all – pursuant to illegal kickback, referral and fee-splitting

arrangements with unlicensed individuals and entities as part of a scheme to defraud New York automobile insurers; and

- (v) the Defaulting Defendants were ineligible to bill for or collect No-Fault Benefits for the Fraudulent Services because the services were performed – to the extent that they were performed at all – by independent contractors, rather than by the Defaulting Defendants’ employees.

See Docket No. 1, ¶¶ 2-6, 30-91, 129-143, 291-324, 335-368, *passim*.

9. As further set forth in the Complaint, the Fraudulent Services rendered and billed by the Defaulting Defendants were the product of a multifaceted scheme perpetuated by the Defendants at a multidisciplinary “No-Fault clinic” located at 1552 Ralph Avenue, Brooklyn, New York (the “Ralph Ave Clinic”). The Ralph Ave Clinic was illegally owned and controlled by unlicensed laypersons (the “Management Defendants”) who “purchased” the licenses of healthcare professionals, including Hershkowitz, in order to fraudulently incorporate, control, and operate multiple healthcare professional corporations and professional “practices” at the Ralph Ave Clinic, including Therapeutic Chiro. The Management Defendants then paid cash kickbacks to “runners” and others, including Insureds, in order to solicit Insureds and create a patient base at the Ralph Ave Clinic. The Defendants then billed GEICO for a laundry-list of high frequency, repetitive and unnecessary treatments, using as “fronts” the licenses and tax identification numbers of an ever-changing number of healthcare professionals and professional corporations, including the Defaulting Defendants who subjected Insureds to a course of medically unnecessary chiropractic services, as set forth in detail in the Complaint. Id. at ¶ 291-324.

10. As a result of the above, GEICO seeks recovery of the \$396,002.73 that GEICO paid in reliance on the fraudulent billing that the Defaulting Defendants submitted or caused to be submitted to GEICO.

11. In addition to seeking recovery of the money that GEICO paid in reliance on the fraudulent billing that the Defaulting Defendants submitted or caused to be submitted, GEICO seeks a declaration that it is not obligated to pay \$627,943.28 in additional, pending fraudulent claims submitted or caused to be submitted by the Defaulting Defendants seeking payment for the Fraudulent Services. See Docket No. 1, *passim*.

**C. Investigation Pursuant to Service Members Civil Relief Act (50 U.S.C. § 521)**

12. Pursuant to the requirements of 50 U.S.C. § 521(b), I have made a careful investigation into whether Hershkowitz is in the military by seeking a certificate from the United States Department of Defense Manpower Data Center. The certificate, annexed as Exhibit “A” to this Declaration, indicates that Hershkowitz does not currently serve in the United States military.

13. As a result of my investigation, I can state that Hershkowitz is not in military service.

**II. GEICO’s Damages**

14. Annexed hereto, as Exhibit “B”, is the Declaration of Robert Weir, GEICO’s Claims Manager, and an accompanying Tax Identification Run (“TIN Run”), Claim Run, and Litigation Run, which set forth the total amounts that GEICO voluntarily paid in reliance on the Defaulting Defendants’ fraudulent billing, as well as the total amount of unpaid claims that currently are in dispute amongst the parties.

15. Based on the TIN Run, the damages attributable to GEICO’s voluntary payments to Therapeutic Chiro are \$396,002.73.

16. The total amount of unpaid claims that currently are in dispute amongst the parties is \$627,943.28.

### **III. Interest**

17. Pursuant to C.P.L.R. §§ 5001 and 5004, GEICO submits that it is entitled to pre-judgment interest at the rate of 9% per annum in the amounts set forth in the chart which is annexed hereto as Exhibit "C". The interest has been proposed using a calculation method less advantageous to GEICO, but easier for the Court to evaluate and calculate. Specifically, the interest was calculated at 9% per annum using the start date of January 1 of the year following the year in which the payments were made through and including December 31, 2018 (an estimated judgment entry date).

### **IV. No Prior Request for this Relief**

18. No prior request for the relief sought by GEICO has been made to this Court or any other tribunal.

### **V. Proposed Default Judgment**

19. A proposed Order Granting Default Judgment is annexed hereto as Exhibit "D".

### **VI. Certificate of Mailing**

20. Pursuant to Local Civil Rule 55.2(c), I hereby certify that the papers submitted in support of this motion have been mailed to the Defaulting Defendants at their last known addresses, as well as to counsel. Specifically:

David Hershkowitz, D.C.  
480 Buffalo Court  
Unit 480  
West New York, NJ 07093-8320

Therapeutic Chiropractic Services, P.C.  
417 E 87<sup>th</sup> Street, Apt. 1D  
New York, NY 10128-6572

Therapeutic Chiropractic Services, P.C.  
c/o New York Secretary of State  
99 Washington Avenue

Albany, New York 12231-0001

Gabriel & Shapiro LLC  
3361 Park Avenue  
Suite 1000  
Wantagh, NY 11792

Counsel for the Defaulting Defendants, Gabriel & Shapiro LLC, also are also receiving notice of these moving papers via the federal court system's electronic filing system, because they have previously filed a notice of appearance in June 2018 (though Gabriel & Shapiro LLC has taken absolutely no action on behalf of the Defaulting Defendants in response to the Complaint or the Court's multiple Orders in this case.)

I declare under penalties of perjury that the foregoing is true and correct. Executed at Uniondale, New York on December 13, 2018.

/s/ *Priscilla D. Kam*  
Priscilla D. Kam (PK 1505)